

**STATE OF WASHINGTON
OFFICE OF PUBLIC DEFENSE**

**925 Plum St., Bldg. 4, 3rd Floor
P.O. Box 40957
Olympia, Washington 98504**

**REQUEST FOR PROPOSAL
RFP 008
January 12, 2005**

**LEGAL REPRESENTATION ON APPEAL OF INDIGENT DEFENDANTS
IN DIVISIONS II AND III OF THE WASHINGTON STATE COURT OF APPEALS
AND IN THE WASHINGTON STATE SUPREME COURT FOR CASES
ORIGINATING IN THE DIVISION II AND III AREAS**

This Request for Proposal (RFP) invites responses from attorneys who do not presently hold contracts with the Office of Public Defense (OPD) and who are interested in providing legal representation on appeal of indigent defendants/appellants in Divisions II or III of the Washington State Court of Appeals and in the Supreme Court for cases originating in the Divisions II and III areas for fiscal years 2006-2007 (July 1, 2005 to June 30, 2007).

- 1. PURPOSE:** The purpose of this RFP is to receive proposals regarding delivery of indigent appellate services to the Court of Appeals, Divisions II and III and to the Supreme Court for cases arising in Divisions II and III. Division II counties are Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum. Division III counties are Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

These appeals involve all cases for which the Office of Public Defense administers funding including, among others, criminal cases, dependencies, termination of parental rights, and cases involving juvenile offenses.

Every attorney performing work under the contract must have a history of providing excellent representation to clients. Attorney-providers must:

- be adept at legal research and analysis,
- have excellent legal writing and oral argument skills,
- be able to communicate well with clients,
- be willing to take seven hours of CLE in criminal law every year,
- understand the Rules of Appellate Procedure, and
- be able to meet court deadlines for briefs and other required materials.

2. **BACKGROUND:** The Office of Public Defense (OPD) was established by the 1996 Legislature to “implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington.” Currently in Divisions II and III individual private attorneys are appointed by the superior court judges to represent the defendant/appellant on all indigent appeals. Pursuant to a rule change to RAP 15.2 effective July 1, 2005, attorneys will be designated by OPD and appointed by the appellate courts. Appointed attorneys invoice OPD for services rendered according to contract or a payment schedule adopted by OPD’s Advisory Committee. Approximately three-dozen attorneys have continuing indigent appellate contracts with OPD in Divisions II and III at the current time. A limited number of additional contract cases are expected to be available.

OPD is issuing this RFP to invite additional attorneys to submit their qualifications for appointment as indigent appellate counsel in Divisions II and III for fiscal years 2006-2007 (from July 1, 2005 to June 30, 2007). OPD’s goal, in consultation with the courts, is to continue to develop a funding mechanism that encourages high-quality, efficient indigent appellate representation.

Contracts for appellate services will be awarded based on qualifications of the applicants, the projected number of appellate cases, and the most cost-effective use of resources. Payment will be a standard \$2,275 per case. Extraordinary compensation is available on a case-by-case basis where an extraordinary number of attorney hours are required for reasons including complex or unusual legal issues, issues of first impression, complex and lengthy trial records, and supplemental briefing required by the courts.

Attorneys who contract with OPD to provide indigent appellate services must submit timely invoices in order to receive payment for their services. A copy of the OPD Payment Policies is attached as Appendix A.

3. **RFP ADMINISTRATION:**

- a. **RFP Coordinator:** The RFP Coordinator is:

Mary Jane Ferguson, Deputy Director
Office of Public Defense
925 Plum St., Bldg. 4, 3rd Floor
P.O. Box 40957
Olympia, Washington 98504-0957
Telephone: (360) 956-2110
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Agency website: www.opd.wa.gov
Fax: (360) 956-2112

b. RFP Schedule:

RFP released	January 12, 2005
Proposals due	February 8, 2005 at 4 p.m.
Evaluation of proposals begins	February 9, 2005
Mailing of letters to applicants	March 8, 2005
Mailing of contracts to successful applicants	March 9, 2005
Protest period	From March 8 to March 21, 2005

- c. Reservation:** OPD reserves the right to revise the RFP schedule, to revise the RFP and/or to issue amendments to the RFP. OPD also reserves the right to cancel or to reissue the RFP in whole or in part prior to the execution of a contract. OPD also reserves the right to refrain from contracting with any and all applicants and/or to contract with a qualified applicant at a date later than the date specified in this RFP. The release of the RFP does not compel OPD to enter into any contract pursuant to the RFP.

Applicants may withdraw their responses at any time prior to the response closing date and time of February 8, 2005 at 4 p.m. To accomplish this, a written request signed by an authorized representative of the applicant must be submitted to the RFP Coordinator.

- d. Applicants' Questions:** From January 12, 2005 to February 8, 2005 applicants may submit questions and receive answers. The questions must be in written form. Interested applicants may submit questions to the RFP Coordinator by mail, e-mail, or hand-delivery. Applicants may request that their question and OPD's answer not be circulated to other potential providers. OPD will determine if the applicant's question points to an error or shortcoming in the RFP. If that is the case, OPD reserves the right, regardless of the applicant's request, to circulate the question and answer to all potential applicants, notifying them of the error and what corrective action OPD will take. If the information is not critical, but OPD judges it fair to circulate the answer to all potential applicants, the inquiring applicant will be given the opportunity to withdraw the question. If none of the above conditions exist, and the

question reveals an applicant's unique proposal strategy, OPD will honor the applicant's request and respond only to the inquirer.

All questions and answers which OPD determines may be circulated will be available to the public on OPD's website at www.opd.wa.gov during the time the proposals are being formulated. Interested applicants may also request that OPD mail them a copy of all questions and answers which have been circulated.

- e. **RFP and Other Information:** OPD will post this RFP on its website at www.opd.wa.gov by January 12, 2005 or as soon as possible thereafter.
 - f. **Insurance:** Contractors with the state of Washington must carry industrial insurance (RCW Title 51), if applicable. Attorney contractors must maintain professional liability insurance for all acts which occur pursuant to the contract. Copies of proof of insurance must be enclosed in the applicant's proposal.
 - g. **Proprietary Material:** No materials submitted by applicants will be available for public review until after contract awards have been made.
 - h. **Modification of Proposals:** Applicants may modify proposals after the submission date only to correct mistakes on a proposal and only if the correction is consistent with the fair treatment of other interested providers. OPD has the sole discretion to allow an applicant to correct a mistake.
 - i. **Clarification of Responses:** As part of the evaluation process, and at the discretion of OPD staff, applicants may be asked to clarify specific points in their respective responses. OPD reserves the right to request oral presentations from applicants.
4. **MINIMUM QUALIFICATIONS:** The following qualifications are required for attorneys performing under the contract with OPD for work done in Divisions II or III.
- a. **Licensing and Prior Experience:**
 - i. Every attorney providing appellate indigent defense services must be a licensed member, in good standing, of the Washington State Bar Association.
 - ii. Every attorney providing appellate indigent services must have two years of criminal trial and/or appellate experience, or be closely supervised by an attorney who has this experience;

- iii. Every attorney providing appellate indigent services must have, in the last two years, filed a brief in a criminal, dependency, juvenile, or parental termination case in a Washington appellate court, or
 - (1) Filed such a brief in another jurisdiction, or
 - (2) Served one year as a state or federal appellate law clerk, or
 - (3) Done extensive trial briefing,OR
Be closely supervised by an attorney with this experience.

Unless good cause is shown, no attorney may provide services under a contract with OPD if that attorney has been removed from representation in a case by order of the court for failure to perform basic services necessary to the case or to the client, or in any manner has been found to be ineffective on appeal by either an ethics panel or by an appellate court.

- 5. PROPOSAL REQUIREMENTS:** Interested providers may submit their written proposals by mail or hand-delivery to the RFP Coordinator at the address listed in 3(a). Proposal documents will not be accepted by e-mail, fax or on disk. An original and one copy of the proposal should be submitted. All submissions will be acknowledged by the RFP Coordinator as having been received. The proposal(s) must be received by the RFP Coordinator by February 8, 2005 at 4 p.m.

Applicants should address the following areas in their proposals:

- a. **Basic Information:** Name, address, phone number, fax number, email address and Washington State Bar Association number.
- b. **Experience:**
 - i. Explain your experience in appellate legal representation, including experience with criminal cases, parental termination, dependency, and juvenile offenses.
 - ii. Explain your experience with poor people in need of legal representation.
 - iii. OPD contract attorneys are required to consult with the client at every critical stage of the proceedings consistent with the Rules of Professional Conduct. Explain your standards with regard to communication with clients. Please reference the OPD Communications Guidelines attached at Appendix B and explain how you would comply with these guidelines.

- iv. Have you ever been removed from representation in a case by order of the court for failure to perform legal services necessary to the case or to the client, or in any manner been found to be ineffective on appeal by either an ethics panel or by an appellate court? If so, please list the incidents and explain the circumstances.
- v. Describe any past instances when you were sanctioned by a court for failure to meet deadlines.

c. Case Management–Delivery of Services:

- i. Explain how you will manage an appellate caseload within the timeframes mandated by the court rules within your existing practice. Be specific as to number of cases and your ability to perfect the appellate record and submit briefs in a timely manner. What are the method or methods you will use to provide services?
- ii. What is the number of cases you are able to manage in a twelve-month period? Specify the number of cases, the minimum caseload, the ideal or optimum caseload, and the maximum caseload per month.
- iii. Provide a monthly estimate of time you plan to spend on non-appellate cases or other employment.
- iv. Specify from which Court of Appeals division(s) you are willing to accept cases. List counties in which you have practiced in superior court or counties from which you have accepted appellate cases. Specify your preferred counties. Applicants understand they may be required to accept cases from any of the counties in the division(s) specified on an as needed basis.
- v. State any limitations on the type or complexity of case you are willing to accept.
- vi. Describe or provide a copy of any non-discrimination policy of your organization.
- vii. Provide a description of your library and other research resources available to you. Describe your use of online resources, including research services, the OPD Brief Bank, and the Washington State Judicial Information System (JIS).

- viii. Detail how you would handle court and client complaints, including court-imposed sanctions and allegations of ethical violations.
 - ix. Review the OPD Payment Policies attached at Appendix A and provide a statement that you will be able to conform to the requirements of these policies.
- d. References:** List three professional references (with addresses and phone numbers) who are able to provide information regarding your ability to handle indigent appellate cases. One of these references should be a judge who can speak about your qualifications.
- e. Writing Samples:** Submit four appellate or trial briefs you wrote and edited yourself, without outside assistance. Submit four copies of each brief. The briefs should be in hard copy and not electronic form. The briefs should demonstrate the quality of work you can do should your proposal be accepted. Indicate the number of hours you spent preparing each brief. OPD reserves the right to evaluate briefs you have previously submitted for indigent appellate cases.
- 6. EVALUATION:** All proposals will be screened to determine whether the minimum requirements of the RFP are met; those proposals which meet the minimum RFP requirements together with their accompanying writing samples will then be evaluated.
- a. Proposal Evaluation Criteria:** Following are the criteria which will be used in the selection of proposals.
- Of very high importance:
- i. High quality indigent appellate defense experience. Among the factors considered will be the attorney's experience in indigent appellate defense and demonstrated ability to analyze issues in appellate cases and to proceed in a manner appropriate to such analysis.
 - ii. Experience producing high quality written work as evidenced by appellate briefs, motions, and other filings, and recommendations.
 - iii. Meeting the needs and interests of the appellate and trial courts. Among factors considered are the attorney's ability to work with the court and the attorney's recommendations.
 - iv. An adequate proposed plan for delivery of services which will ensure effective legal representation and timely filing of briefs and

other required filings in the appellate court. Among the factors considered are the expected caseload and proposed procedures for managing a caseload within the appellate court's timeframes.

- v. Adequacy of the attorney's client communications procedures and conformance with RPC standards and OPD Communication Guidelines.

Of high importance:

- vi. Experience in the trial courts in providing high quality representation to indigent people who are charged with crimes.
- vii. Experience providing legal services in a range of cases for indigent persons, including criminal, dependency, parental termination, and juvenile offenses.
- viii. A satisfactory history of initiating and maintaining client contact during representation.
- ix. A willingness and ability to handle cases from a wide variety of counties on an as needed basis.

OPD will evaluate applicants' proposals based on the contents of the proposals, the quality of brief writing, and any other information relevant to the evaluation criteria and the minimum qualifications.

7. POST EVALUATION EVENTS: OPD expects to mail written notices to applicants on March 8, 2005.

a. Protest Procedures:

- i. Unsuccessful applicants protesting this process must follow the procedures described herein. Protests that do not follow these procedures will not be considered. This protest procedure constitutes the sole administrative remedy available to the applicant under this RFP.
- ii. All protests must be in writing, and signed by the protesting party. The protest must state all facts and arguments on which the protesting party is relying. All protests shall be addressed to the RFP Coordinator.
- iii. Only protests setting forth an issue of fact concerning a matter of bias, discrimination, conflict of interest, or non-compliance with

procedures described in the RFP shall be considered. Protests based on non-procedural matters will not be considered.

- iv. In the event a protest may affect the interest of other potential providers, such providers will be given an opportunity to submit their views and any relevant information on the protest to the RFP Coordinator.
- v. Upon receipt of a protest, a protest review will be held by the OPD Advisory Committee to review the RFP process utilized. This protest review is not a review of responses submitted or the evaluation scores received. The purpose of the protest review is to ensure that procedures described in the RFP document were followed, all requirements were met and all applicants were treated equally and fairly.
- vi. Protests will not be accepted prior to selection of the successful applicants. Protests must be received between March 8 and March 21, 2005. Protests may be sent by mail, fax or be hand-delivered. The Advisory Committee will consider the protest and respond as soon as possible. If additional time is required, the protesting party will be notified of the delay.

8. CONTRACT NEGOTIATIONS: OPD intends to complete contract negotiations with the successful applicants and execute all contracts by March 31, 2005. In the event of a negotiation impasse with any provider, OPD reserves the right without penalty and at its sole discretion to:

- a. Reject the provider's proposal and select the next best qualified provider; or
- b. Reallocate that provider's share of the caseload, if applicable, to the other potential providers, or to other recommended providers; or
- c. Take no further action to continue award of contracts under this RFP; or
- d. Reissue the RFP with any changes OPD deems appropriate.

Thank you for your interest and participation.

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APPENDIX A

OPD Payment Policies

Policy A—Representation and Applicability of Policies

A1. Representation

Attorneys appointed to represent indigent appellate parties shall take all steps necessary to provide effective assistance of counsel on appeal, and to comply with the Rules of Appellate Procedure and Rules of Professional Conduct. These duties may include, but are not limited to: filing a designation of clerk's papers; filing a statement of arrangements; reviewing the clerk's papers and report of proceedings; consulting with the client at every critical stage of the proceedings; consulting with trial counsel and the clerk of the appellate court as necessary; conducting adequate legal research; drafting an appropriate brief or similar pleading; drafting a reply brief where appropriate; presenting any scheduled oral arguments in front of the clerk, commissioner or appellate court; and filing post-opinion motions or a petition for review where necessary and appropriate.

A2. Applicability

Both contract cases and non-contract cases will be handled in accordance with these policies. Contracts generally will be written in accordance with these policies. If in a particular case contract terms differ from these policies, the contract terms will control.

Policy B—Payment Events

B1. Payment Events

OPD pays attorneys at the time of three “payment events”:

- a) First payment event—Appointment. Includes reviewing the trial court file, ordering transcripts, communicating with the client, and filing a statement of arrangements with the court of appeals to perfect the appeal.
- b) Second payment event—Filing a brief or brief equivalent, which includes:
 - i. A brief in a direct criminal appeal, an appeal from a termination of parental rights, an appeal from a probation revocation hearing, an appeal from a disposition in a juvenile offense matter, an appeal from a dependency hearing, an appeal from a sexual predator hearing, or an appeal from any other proceeding in which the expenditure of public funds for appellate indigent defense is authorized by law.

- ii. A brief in a civil appeal when an in forma pauperis motion is granted by the Supreme Court authorizing the expenditure of public funds for appellate representation.
- iii. A personal restraint petition when the expenditure of public funds for appellate court representation is authorized.
- iv. Generally, a brief in a case when discretionary review has been granted by the Supreme Court or Court of Appeals.
- v. A motion for voluntary withdrawal.
- c) Third payment event—
 - i. Cases set with oral argument—date of oral argument
 - ii. Cases set without oral argument—date of court's consideration without oral argument or date of opinion
- d) Payment event where review is denied in Grove cases—For discretionary review of cases involving a statutory right to counsel at all stages of the proceedings (for example, dependency or sexually violent predator cases), pursuant to the Grove decision, 127 Wn. 2d 221 (1995), if review is denied, counsel shall submit an invoice for payment within 60 days of denial of review.

Policy C—When Invoices Shall be Filed

C1. Invoices of Counsel

- a) Attorneys who are assigned indigent appellate cases must invoice OPD within 60 days of each of the three specified payment events.
- b) Even if a case is delayed for some reason, attorneys must file all invoices within the 60-day limit, based on the date the payment event occurs. This applies, for example, when a stay is entered pending the outcome of another case.
- c) Submission of an invoice more than 60 days from the date of the payment event will result in late penalties of 10% of the original invoice per month or partial month, unless good cause is shown, as determined by OPD in its discretion.

Comment: OPD pays attorneys for their work on an on-going basis. This provides a dependable cash flow for the attorneys to cover expenses as they work on the cases (which may take two years or more from start to finish).

Comment: If the Supreme Court accepts review of a Court of Appeals case, the Supreme Court case constitutes a new case for which an initial invoice must be submitted within 60 days.

C2. Extraordinary Compensation

- a) Counsel may petition the Office of Public Defense for additional compensation reflecting unusual work in a case beyond basic services. Factors which OPD may consider in deciding whether to award extraordinary compensation include:

- i. Complex or unusual legal issues requiring unusual research or costs.
 - ii. Issues of first impression under the law of Washington without *stare decisis* requiring unusual research.
 - iii. Complex and lengthy trial record relevant to issues raised on appeal.
 - iv. Supplemental briefing requested or authorized by the appellate court.
 - v. Cases creating an unusual financial hardship upon the attorney.
 - vi. A certification of extraordinary status by the court hearing the case.
- b) Attorneys seeking extraordinary compensation must submit a request letter including an affidavit or declaration and any other supporting materials necessary for a review of the request.

C3. Invoices of Court Reporters

Invoices of court reporters may be submitted as soon as the report of proceedings has been filed by the court reporter. Submission of an invoice more than 60 days from the date the record is filed will result in late penalties of 10% of the original invoice per month or partial month, unless good cause is shown, as determined by OPD in its discretion.

C4. Invoices of the Superior Court Clerks



Invoices of superior court clerks may be submitted as soon as the clerks' papers have been prepared and must be submitted no more than 60 days after the clerks' papers have been prepared.

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APPENDIX B

Washington State Office of Public Defense Client Communications Protocol Guidelines

The Rules of Professional Conduct require attorneys to keep their clients reasonably informed to enable them to make informed decisions about their case. RPC 1.2; 1.4(a); 1.4(b). At a minimum, communication protocols need to address client communications as appropriate at the following points of the representation:

APPOINTMENT LETTER	At the initial time of the appointment, the attorney shall write to the client to outline the scope of the representation, to describe the stages of the appeal, to note the possible assessment of costs for appellate representation, and to provide an address and/or phone number by which the client can communicate with the attorney.
EVALUATIVE COMMUNICATION OR EVALUATIVE LETTER	<p>The attorney shall either:</p> <ul style="list-style-type: none"> Communicate with the client, by letter or telephone, regarding the fact that the attorney has read the record and analyzed the case and regarding the specific means by which the client may contact the attorney to fully discuss the merits and other factors involved in the client's case and to exercise his or her options. <p style="text-align: center;">or, alternatively,</p> <ul style="list-style-type: none"> Summarize in a letter the results of the attorney's investigation and analysis of the merits of the case, remind the client that costs may be assessed in case of an unsuccessful appeal, and provide an opportunity for the client to contact the attorney to exercise his or her options. <p>Some attorneys may choose to provide an evaluative communication or letter before writing the brief; others may choose to provide an evaluative communication or letter after writing the brief and/or accompanying the brief.</p>
LETTER ACCOMPANYING BRIEF	The attorney shall send the client the opening brief and inform the client of the right to obtain a copy of the transcript and to file a Statement of Additional Grounds for Review pursuant to RAP 10.10.
STATUS REPORTS	While the case is on-going, the attorney may update the client on developments. Examples include informing the client of the date of oral argument and forwarding a copy of the State's brief and any reply brief.
LETTER ACCOMPANYING DECISION	The attorney shall send the client a copy of the appellate court's decision and shall inform the client whether the attorney plans to file a Petition for Review or whether the client has the option to file a petition and if so, the time constraints for such a petition.
LETTER ACCOMPANYING MANDATE	The attorney shall send the client a copy of the mandate and inform the client of the applicable time constraints for any further state or federal relief.